

1 THE HONORABLE BENJAMIN H. SETTLE  
2  
3  
4  
5  
6

7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 TODD BRINKMEYER

11 Petitioner,

12 v.

13 WASHINGTON STATE LIQUOR AND  
14 CANNABIS BOARD,

15 Respondent.

16 Case No. 3:20-cv-05661-BHS

17 **ORDER GRANTING MOTION FOR  
18 PRELIMINARY INJUNCTION**

19 **[PROPOSED]**

20 THIS MATTER came before the Court on Petitioner Todd Brinkmeyer's Motion for  
21 Preliminary Injunction (the "Motion"). Having considered the Motion, the Declaration of Todd  
22 Brinkmeyer in Support of Motion for Preliminary Injunction, the Declaration of Scott Atkison in  
23 Support of Motion for Preliminary Injunction, the Declaration of Chris Masse in Support of Motion  
24 for Preliminary Injunction, the Declaration of Andy Murphy in Support of Motion for Preliminary  
25 Injunction, any opposition to the Motion, any papers supporting the opposition, Brinkmeyer's reply  
26 in support of the Motion, any papers supporting the reply, and the files and records herein, the  
Court is fully advised in the matter.

The Court hereby FINDS that:

1. Brinkmeyer has presented evidence and argument that he is likely to succeed on  
the merits of his claims.

1           a. The "Residency Requirements" in RCW 69.50.331(1)(b), WAC 314-55-020(10),  
 2 and WAC 314-55-035 expressly discriminate against nonresidents of Washington, which  
 3 includes Brinkmeyer as an Idaho resident, by imposing a durational residency requirement as a  
 4 condition of becoming a licensee or true party of interest ("TPI") to a licensed marijuana  
 5 business. Therefore, Brinkmeyer has carried his burden of proving the Residency Requirements  
 6 are facially invalid because there is no set of circumstances where the laws as currently written  
 7 can be constitutionally applied.

8           b. The Residency Requirements are not needed for Respondent the Washington  
 9 State Liquor and Cannabis Board (the "LCB" or "State") to maintain oversight over licensed  
 10 marijuana businesses and their owners. The State can thoroughly vet licensee applicants without  
 11 requiring residency, the State can adequately monitor business operations because the marijuana  
 12 businesses licensed by the State are located in Washington, and the State's ability to revoke  
 13 licenses provides strong incentives to comply with state law.

14           c. The Residency Requirements violate Brinkmeyer's right to pursue a livelihood  
 15 and right to travel, as protected by The Privileges and Immunities Clause in Article IV of the  
 16 United States Constitution. The State has not presented a substantial reason that justifies the  
 17 discrimination against nonresidents in the Residency Requirements. The interests the State has  
 18 identified to purportedly justify the Residency Requirements are not substantially related to a  
 19 legitimate state objective because the State's existing enforcement authority and enforcement  
 20 scheme provides less restrictive means to accomplish legitimate state objectives.

21           d. The Residency Requirements violate the Dormant Commerce Clause by expressly  
 22 discriminating against nonresidents. The State can accomplish legitimate local interests with  
 23 nondiscriminatory alternatives through its existing enforcement authority and enforcement  
 24 scheme.

25           e. The Residency Requirements violate Brinkmeyer's rights under the Fourteenth  
 26 Amendment's Equal Protection and Privileges or Immunities Clauses, both of which protect the

1 right to travel as a fundamental right. The Residency Requirements are therefore subject to and  
 2 fail strict scrutiny review. The State has not identified a compelling government interest served  
 3 by the Residency Requirements. Further, the Residency Requirements are not narrowly tailored  
 4 to serve a government interest because the State's oversight powers provide less restrictive means  
 5 to accomplish government interests.

6 f. The Residency Requirements violate Brinkmeyer's Fourteenth Amendment due  
 7 process right to pursue a profession, which is subject to rational basis review. The Residency  
 8 Requirements are not rationally related to a legitimate government interest because the  
 9 Residency Requirements are not needed for the State to evaluate whether applicants meet  
 10 requisite criteria to receive a license or become a TPI.

11 g. The Residency Requirements violate the Privileges or Immunities Clause in  
 12 Article I, section 12 of the Washington State Constitution. The Residency Requirements grant a  
 13 privilege to residents that violate Brinkmeyer's right to carry on a business, which is a  
 14 fundamental right protected by the Washington State Privileges or Immunities Clause. The  
 15 Residency Requirements discriminate between classes of the same business, as marijuana  
 16 companies owned by residents have the privilege of operating in Washington while marijuana  
 17 companies owned by nonresidents do not. The State has not presented evidence that shows the  
 18 Residency Requirements in fact serve the legislature's stated goal for the Residency  
 19 Requirements. No evidence was presented that nonresidents inherently constitute a greater threat  
 20 to public health and safety than residents.

21 h. The State exceeded its statutory authority when promulgating the regulatory  
 22 Residency Requirements. The statutory Regulatory Requirement in RCW 69.50.331(1)(b)  
 23 requires residency of sole proprietors and the "members" of a "partnership, employee  
 24 cooperative, association, nonprofit corporation, or corporation" but the regulatory Residency  
 25 Requirements require residency from every single licensee and TPI. The regulatory Residency  
 26 Requirements conflict with the statute by requiring residency from every person who receives

1 profits from a marijuana business (including shareholders and their spouses) even if they are not  
 2 a sole proprietor or "member" of a business licensed to participate in Washington's marijuana  
 3 industry.

4       2. Brinkmeyer presented evidence and argument that he will suffer irreparable harm  
 5 without the injunction.

6           a. The State's violation of Brinkmeyer's constitutional rights constitutes irreparable  
 7 harm. *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("It is well established that the  
 8 deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'"). Brinkmeyer  
 9 is further irreparably harmed because the State has confirmed that the Residency Requirements  
 10 will prevent him from assuming the equity interests Scott Atkison has in four licensed marijuana  
 11 retail stores in Washington (the "Stores"). Brinkmeyer and Atkison have been friends for 25  
 12 years, and Atkison wants to transfer his interest in the Stores to Brinkmeyer in part because  
 13 Atkison is a Stage IV cancer survivor whose health has progressed to the point where it is  
 14 prudent for him to plan the disposition of his estate.

15           b. Atkison wants to transfer his ownership interest and oversight responsibilities in  
 16 the Stores to Brinkmeyer, but the State will not let him. Brinkmeyer is willing and able to  
 17 assume that equity interest, in part so he can honor his friend by continuing the business and also  
 18 to give Atkison and the other owners of the Stores peace of mind that the Stores will be well-  
 19 capitalized and in strong, experienced hands, which Brinkmeyer can provide. Should Atkison  
 20 pass before the State is enjoined from enforcing the Residency Requirements, then his equity  
 21 interest could only transfer to a Washington resident because Brinkmeyer will remain  
 22 unqualified to obtain the license based solely on his resident status. The only Washington  
 23 marijuana businesses Brinkmeyer is interested in obtaining an interest in are Atkison's Stores.  
 24 The Stores are unique to Brinkmeyer, and the loss of them as a going concern constitutes  
 25 irreparable harm. *See Organo Gold Int'l, Inc. v. Ventura*, No. C16-487RAJ, 2016 WL 1756636,  
 26 at \*10 (W.D. Wash. May 3, 2016).

1           c. Further, being unable to take over the Stores' ownership and oversight  
 2 responsibility at a time that would give Atkison comfort and security is additional irreparable  
 3 harm to Brinkmeyer. *Rent-A-Ctr., Inc. v. Canyon Television & Appliance Rental, Inc.*, 944 F.2d  
 4 597, 603 (9th Cir. 1991).

5           3. Brinkmeyer presented evidence and argument that the balance of equities tips in  
 6 his favor. Enjoining the State from enforcing the unconstitutional Residency Requirements does  
 7 not harm the State. *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002).  
 8 Further, the State has already repeatedly performed the same background checks on Brinkmeyer  
 9 (and his spouse) that it performs on potential licensees. By repeatedly approving Brinkmeyer as a  
 10 financier, the State has confirmed there is nothing in his background that prevents him from  
 11 participating in Washington's marijuana industry. The requested injunction also does not prevent  
 12 the State from vetting and approving applications to obtain equity in licensed marijuana  
 13 businesses. Through exercising its broad enforcement ability over the marijuana industry, and  
 14 ensuring that applicants comply with the remaining rules that apply to State licensees other than  
 15 the Residency Requirements, the State can still review and process applications in a manner that  
 16 thoroughly protects the public.

17          4. Brinkmeyer presented evidence and argument that his requested injunction is in  
 18 the public interest. It "is always in the public interest to prevent the violation of a party's  
 19 constitutional rights." *Melendres*, 695 F.3d at 1002 (9th Cir. 2012). The injunction will also  
 20 benefit the public by allowing nonresidents of Washington who meet the State's qualifications to  
 21 become a licensed marijuana business owner to access Washington's marijuana market.  
 22 Expanding the market for potential equity holders thereby increases competition, which benefits  
 23 consumers, and increases access to capital for existing marijuana businesses.

24          5. No bond is required from Brinkmeyer in connection with this injunction because  
 25 the State can still fully vet marijuana license applicants under the terms of the injunction, and  
 26 reject applicants that are unqualified, so there is no risk of harm to the State or the public.

1 Now, therefore, the Court hereby ORDERS that:

2 1. The Motion is GRANTED;

3 2. The State, as well as its officers, agents, servants, employees, attorneys, and such  
4 persons in active concert or participation therewith having notice of this Preliminary Injunction,  
5 are hereby restrained and enjoined, pending termination of this action, from enforcing, applying,  
6 or relying upon the Residency Requirements in any way or for any purpose.

7 ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

---

8  
9  
10 HONORABLE BENJAMIN H. SETTLE

11 Presented by:

12 MILLER NASH GRAHAM & DUNN LLP

13 s/Andy Murphy

14 Daniel J. Oates, WSBA No. 39334  
15 Andy Murphy, WSBA No. 46664  
16 Pier 70 ~ 2801 Alaskan Way, Suite 300  
Seattle, WA 98121  
Tel: 206-624-8300  
Fax: 206-340-9599  
Email: *Dan.Oates@millernash.com*  
17 *Andy.Murphy@millernash.com*  
18 Attorneys for Petitioner

## **DECLARATION OF SERVICE**

I, Brie Geffre, hereby declare under penalty of perjury under the laws of the United States and of the state of Washington, that on this 6th day of August, 2020, I caused the foregoing to be filed using the CM/ECF system which will send notice of the same to all registered parties

SIGNED at Seattle, Washington this 6th day of August, 2020.

s/Brie Geffre  
Brie Geffre, Legal Assistant

4851-9827-2711.2